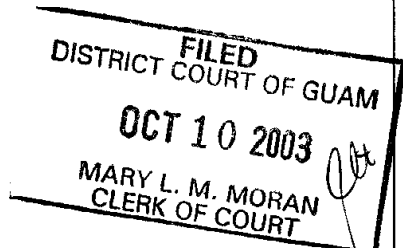


1 Tony H. Ashtiani  
P.O.Box 12723  
2 Tamuning Guam 96931  
671-688-4844  
3 671-653-5575



4 UNITED STATES DISTRICT COURT  
5  
6 DISTRICT OF GUAM

8 Tony H. Ashtiani, )  
9 Plaintiff, ) Civil Case No.: 02-00032  
10 Vs. )  
11 Continental Micronesia Inc, )  
12 Db, Continental Micronesia, ) PLAINTIFF'S REPLY TO  
13 Continental Airlines, ) DEFENDANT'S OPPOSITION TO  
14 Defendant. ) PLAINTIFF'S MOTION FOR  
15 ) PROTECTIVE ORDER.  
16 )  
17 )  
18 )  
19 )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )

19 This matter before the Court as plaintiff's opportunity to  
20 clear his name, state the facts and that his actions were  
21 justified in moving the Court for protective order.

23 1) On October 07, 2003. Plaintiff went to CARLSMITH law  
24 firm to drop off a document. Plaintiff asked Ms. Elyze McDonald  
25 if she was going to file Opposition to Motion for Protective

1 Order, Ms. McDonald stated that she "already did," however  
2 plaintiff did not have a copy of it. As shown by (EXHIBIT A) it  
3 is not listed as one of the documents served on plaintiff  
4 earlier that day. Plaintiff kindly requested a copy of the  
5 Opposition. Instead, defense counsel directed him to the Post  
6 Office or to District Court to make copies, Plaintiff on October  
7 8, 2003 kindly asked Mr. Walter (Court staff) for such copies.  
8 Plaintiff is not aware of any reason why Ms. McDonald would not  
9 serve him with copies except burdening him with having to go to  
10 the District Court and make copies there.  
11

12  
13 2) It is note worthy that Plaintiff is grateful to District  
14 Court of Guam staff for their prompt response in going to  
15 Chamber getting my file to make copies, Plaintiff became aware  
16 of (29) pages of OPPOSITION documents on October 08 2003.

17 (JOINT EXHIBIT B).  
18

19 3) Plaintiff through out this litigation, in particular  
20 answering interrogatories and response to production of  
21 documents, has sought the prevention of any harm by defendant  
22 upon those of its employees who inflicted harm on plaintiff.  
23 Furthermore Plaintiff prays for wisdom to understand the complex  
24 laws of this advanced great land of ours.  
25

1           4) Plaintiff had not meant any harm by motion for  
2 protective order, Plaintiff admits agreeing to a 30 days  
3 extension, as per defendant's request. However, when drafting  
4 the stipulation intended to commemorate the agreement between  
5 the parties, defendant suddenly changed it to 17 days. Plaintiff  
6 did not agree to a 17 days extension, therefore, he did not sign  
7 the stipulation. Plaintiff was confused by sudden change as  
8 defendant continuously objected to production of documents.  
9 Defendant refused to "Meet and Confer" in person per **LR 37.1.**  
10 Rather, defendant wrote: "Courts have held that telephone  
11 conferences satisfy the requirements of the Local Rules of  
12 practice and the Federal Rules of Civil Procedure." (Citing,  
13 Ballot v. University Of Kansas Medical Center, 159 F.R.D.  
14 558,560(D. Kan. 1994).)

15  
16  
17           5) Plaintiff in good faith spent 110 Minutes on the phone  
18 to defendant's counsel's Hawaii office, then wrote a letter to  
19 defendant (**EXHIBIT C**) which was omitted from Defendant's recent  
20 filing with the Court. (including omission of important facts).  
21

22           (6) Due to Defendant's "slip and sliding" and "hiding the  
23 ball" tactics, plaintiff was left with limited procedural  
24 mechanism, thus presented Defendant with Second Request for  
25 Production of Documents which was due on October 15, 2003.

1  
2 (7) On September 15 2003 Plaintiff served his second  
3 request for production on defendant and defendant on September  
4 17, 2003 wrote (discovery motion cut off) October 17, 2003. This  
5 date would give plaintiff only one day to file a motion to  
6 compel and one day after receiving defendant's response to  
7 Second Request for Production of Documents, plaintiff was  
8 alerted and several times asked Ms. McDonald "since there is  
9 only (4) requests, could you please answer them so that I have  
10 time to bring a motion to compel." She was not responsive.  
11

12  
13 (8) Accordingly, due to the date changes of the originally  
14 agreed from 30 days to 17 days and ill will motive (to prevent  
15 plaintiff from having enough time to file a motion in case he  
16 was dissatisfied with defendant's production of documents),  
17 Plaintiff filed for motion for protective order and wanted to  
18 obey the ORDER of the United States District Court and did not  
19 want to disobey any ORDER stated in the Scheduling Order.  
20

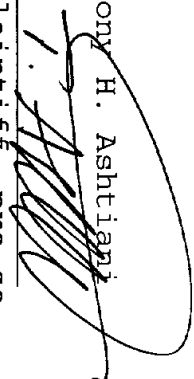
21 (9) Defendant continuously in communication to the Court  
22 states that plaintiff does not follow the rules, while defendant  
23 propounded plaintiff with interrogatories that was in direct  
24 violation of **LR 33.1(a)**. Interrogatories or request for  
25

1 admission shall not exceed twenty five (25) in number, counting  
2 any subparts or sub questions as individual question.

3  
4 (10) Plaintiff has praised Ms. Elyze McDonald for her  
5 ambitious and intelligence, Plaintiff throughout this litigation  
6 will maintain courteous relationship with defendant's counsel  
7 and will keep his continuous respect for her.

8  
9  
10 Respectfully submitted,

11  
12 This 10<sup>TH</sup> day of October 2003.

13  
14 Tony H. Ashtiani  
15   
16 Plaintiff, pro se  
17  
18  
19  
20  
21  
22  
23  
24  
25

CARLSMITH BALL LLP

ELYZE McDONALD

Bank of Hawaii Bldg., Suite 401  
134 West Soledad Avenue, P.O. Box BF  
Hagåtña, Guam 96932-5027  
Tel No. 671.472.6813

Attorneys for Defendant  
Continental Micronesia, Inc.  
dba Continental Micronesia and  
Continental Airlines, Inc.

IN THE DISTRICT COURT OF GUAM

TONY H. ASHTIANI,

Plaintiff,

vs.

CONTINENTAL MICRONESIA, INC.  
dba CONTINENTAL MICRONESIA  
and CONTINENTAL AIRLINES, INC.,

Defendant.

CIVIL CASE NO. CV02-00032

CERTIFICATE OF SERVICE

I, Elyze J. McDonald, hereby certify that on the 7th day of October, 2003, I caused to be personally served, true and correct copies of the documents listed below upon Plaintiff, Tony H. Ashiani:

1. Motion to Reconsider Courts Denial of Defendant's Motion to Shorten Time to Hear Plaintiff's Motion for Protective Order; Declaration of Elyze McDonald; Exhibit A;
  2. Order;
  3. Application for Expedited Pretrial Conference (FED. R. CIV. P. 16);
- Declaration of Elyze McDonald; Exhibit A; and
4. Order.

*T. Ashiani*  
T. Ashiani  
01/17/2003  
11:20

Executed this 4th day of October, 2003.

CARLSMITH BALL LLP

*Elyse McDonald*

ELYSE McDONALD

Attorneys for Defendant  
Continental Micronesia, Inc.  
dba Continental Micronesia and  
Continental Airlines, Inc.

RECEIPT FOR PAYMENT  
DISTRICT COURT OF GUAM  
at HOGATNA, GUAM

Rcpt#:0023178 Date: 10/08/2003

Received From:

ASHTIANI, TONY  
P.O. BOX 12723  
TAMUNING, GUAM 96931

CV-03-00032

TONY H. ASHTIANI vs CONTINENTAL  
MICRONESIA, INC., dba CONTINENTAL  
MICRONESIA and CONTINENTAL  
AIRLINES, INC.

Copies, \$ 0.50 per page. (Qty. 29)

| Account | Amount  |
|---------|---------|
| 322350  | \$14.50 |

Total: \$14.50

Payment Tendered:

|        |         |
|--------|---------|
| Cash : | \$20.00 |
| Check: | \$0.00  |
| M.O.:  | \$0.00  |

\$20.00

Change Due: \$5.50

Checks and drafts are accepted subject  
to collection and full credit will only  
be given when the check or draft has  
been accepted by the financial  
institution on which it was drawn.

Deputy

Clerk:

*Marilyn B. Aldon*  
Marilyn B. Aldon

copy

CARLSMITH BALL LLP

ELYZE McDONALD  
Bank of Hawaii Bldg., Suite 401  
134 West Soledad Avenue, P.O. Box BF  
Hagåtña, Guam 96932-5027  
Tel No. 671.472.6813

**FILED**  
DISTRICT COURT OF GUAM  
**OCT 02 2003**  
MARY L. M. MORAN  
CLERK OF COURT

Attorneys for Defendant  
Continental Micronesia, Inc.  
dba Continental Micronesia and  
Continental Airlines, Inc.

IN THE DISTRICT COURT OF GUAM

TONY H. ASHTIANI,

Plaintiff,

vs.

CONTINENTAL MICRONESIA, INC.  
dba CONTINENTAL MICRONESIA  
and CONTINENTAL AIRLINES, INC.,

Defendant.

CIVIL CASE NO. CV02-00032

**DEFENDANTS' OPPOSITION TO  
PLAINTIFF'S MOTION FOR  
PROTECTION ORDER**

Plaintiff's Motion for Protective Order is unfounded and dilatory. It is intended to delay the taking of his deposition, scheduled on October 8 and 9, 2003. Furthermore, it is not in compliance with the Federal Rules of Civil Procedure or the Local Rules of Practice, as Plaintiff has not met and conferred with Defendant prior to bringing the Motion. The Court should deny the motion and award sanctions against Plaintiff, in the amount Defendant has incurred in opposing the Motion.

REC'D  
CARL SMITH BALL

Date: 9/22/03  
12-31 By: h

Tony H. Ashtiani  
P.O.Box 12723  
Tamuning Guam 96931  
TEL/FAX 1-(671) 653-5575  
CELL 1-(671) 688-4844

September 22, 2003.

CARL SMITH BALL LLP  
Ms. Elyze McDonald  
Bank of Hawaii Bldg., Suite 401  
134 West Soledad Avenue  
Hagatna, Guam 96932-5027

**Re: Discovery Dispute & Motion to Compel Discovery**

**In District Court of Guam CV. 02-00032**

Dear Attorney Ms. McDonald:

This matter before the defense counsel in regards to the letter, which you have provided plaintiff on September 15, 2003. In which you had only listed (1) item as plaintiff's motion to compel that was briefly discussed. For your convenience, I have attached the above-mentioned letter.

As you are well aware, we both spent a great amount of time (110 minutes) discussing statistics and pattern of the practice of the defendant Mr. Hammer and Mr. McKinzie both in official capacity and responsible for affirmative action and EEO of Continental Micronesia in Guam. I have responded to all your issues pertaining discovery in supplemental format per Fed R. Civ P. rule 26, 26e, 33, 34, as you and I have agreed all documents will be submitted to you on October 6, 2003. In lieu, items listed below as plaintiff's motion to compel were discussed and that you maintained your objections.

Further more, We discussed that I am unable to provide defendant answer to Interrogatory No. 14 in reference to break down of witnesses to each cause of action, if you choose to compel and sanction against the plaintiff, I will be more than happy to pay your law firm for the time spent to bring such motion.

**DEFENDANT'S MOTION TO COMPEL**

**INTERROGATORY NO. 14:**

Identify the name of each and every witness you intend to call at trial, the nature of their testimony, and their address and/or phone number, in support of your:

- (a) First Cause of Action in the Second Amended Complaint: Intentional Infliction of Emotional Distress
- (b) Second Cause of Action in the Second Amended Complaint: Negligent Supervisor
- (c) Third Cause of Action in the Second Amended Complaint: Unlawful Discrimination based upon Race and National Origin
- (d) Fourth Cause of Action in the Second Amended Complaint: Intentional Discrimination and Intentional Retaliation post 9/11
- (e) Fifth Cause of Action in the Second Amended Complaint: Violation of Federal Statute of Family Medical Leave Act of 1993
- (f) Sixth Cause of Action in the Second Amended Complaint: Constructive Termination
- (g) Seventh Cause of Action in the Second Amended Complaint: Wrongful Termination
- (h) Eighth Cause of Action in the Second Amended Complaint: Sales of Fraudulent Insurance Policies by Defendant to Employees.

**ANSWER:**

- (a) Documents supporting this Answer have not yet been discovered, and thus, this Answer may be supplemented under Federal Rule of Civil Procedure 26. Facts now known Plaintiff has provided the list of the potential witness that may be called upon during the trial in the **Plaintiff's initial disclosures** submitted to the defendant on June 03, 2003.
- (b) Not all facts supporting this Answer have been discovered, and thus this Answer may be supplemented under Federal Rule of Civil Procedure 26. Facts supporting this Answer are explained elsewhere in this response to interrogatories.

- (c) Not all documents supporting this Answer have been discovered, and thus, this Answer may be supplemented under Federal Rule of Civil procedure Rule 26. Facts supporting this Answer are explained elsewhere in this response to interrogatories.
- (d) Facts supporting this Answer have not been discovered, and thus this Answer may be supplemented under Federal Rule of Civil Procedure 26. Facts supporting this Answer are explained elsewhere in this response to interrogatories.
- (e) Not all facts supporting this Answer have been discovered, and thus this Answer may be supplemented under Federal Rule of Civil Procedure 26. Facts supporting this Answer are explained elsewhere in this response to interrogatories.
- (f) Not all facts supporting this Answer have been discovered, and thus this Answer may be supplemented under Federal Rule of Civil Procedure 26. Facts supporting this Answer are explained elsewhere in this response to interrogatories.
- (g) Documents supporting this Answer have not yet been discovered, and thus, this Answer may be supplemented under Federal Rule of Civil Procedure 26. Facts supporting this Answer are explained elsewhere in this response to interrogatories.
- (h) Facts supporting this Answer have not been discovered, and thus this Answer may be supplemented under Federal Rule of Civil Procedure 26. Facts supporting this Answer are explained elsewhere in this response to interrogatories.

**PLAINTIFF'S MOTION TO COMPEL**

**PRODUCTION OF DOCUMENTS**

**REQUEST NO. 3:** Copy of all (a) P-160s (b) P-187 of Mr. Dixon McKenzie, Human Resources Director.

**RESPONSE :** Objection is being made as to the requested materials being irrelevant, immaterial, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this request because it seeks information, which is confidential, private and personal, and the disclosure of it would necessarily invade the privacy, and expectation of privacy, or person not parties to this suite.

**REQUEST NO. 4:** Copy of all (a) P-160s (b) P-187 of Mr. James Hammer director of maintenance.

**RESPONSE:** Objection is being made as to the requested materials being irrelevant, immaterial, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this request because it seeks information, which is confidential, private and personal, and the disclosure of it would necessarily invade the privacy, and expectation of privacy, or person not parties to this suite.

**REQUEST NO. 6:** Copy of the return receipt of the U.S.P.S certified letter (PS form 3811) signed by the plaintiff on July 12, 2001 which contained plaintiff's termination letter dated July 03, 2001 signed by Mr. Herrera.

**RESPONSE:** A diligent search and reasonable inquiry has been made in an effort to locate the item requested. However, defendant is unable to comply as it does not have in its control or possession a copy of the return receipt of the U.S.P.S. certified letter (PS form 3811) signed by the plaintiff on July 12, 2001 which contained plaintiff termination letter dated July 03, 2001 signed by Mr. Herrera.

**REQUEST NO.7:** All document of 1 thru 6 levels of attendance records and counseling notice of which were received by plaintiff; (b) list of witnesses and attendees whom were present at such meetings, including employer's representative, employees, and union representative; and (c) the jointly filled out discussion form(s) (which, at the end of each such meeting all parties acknowledged such meeting and signed the mentioned form).

**RESPONSE:** (a) If these documents exist and appear to be discoverable in this action, they will be produced; (b) Defendant is unable to comply as it does not have in its possession a list of witnesses and attendees whom were present at such meetings, including employer's representative, employees, and union representative; and (c) objection is being made as to vagueness.

**REQUEST NO.8:** Documents of plaintiff's employee evaluation and/or progress reports from defendant's Technical Services Division, where plaintiff worked and employer provided this form during evaluation as plaintiff had acknowledged and signed of employer expectation from the plaintiff (referred to therein as, "employee").

**RESPONSE:** If these items can be obtained and are discoverable in this action, they will be produced.

**REQUEST NO. 9:** Please provide dates [??] in regard to each and every DC-10-30 exiting the fleets of Continental Micronesia inc.

**RESPONSE:** objection is being made as to relevancy.

**REQUEST NO. 13.** Please provide a list of names of all mechanics, mechanic helpers, Airframe mechanics, sheet metal mechanics, sheet metal mechanic helpers, tool crib attendants either in the Technical Services Division of terminal line or B CHECK that were under the union contract of Continental Micronesia Inc, and International Brotherhood of Teamsters who were employed by the defendant who had two or more consecutive No call / No show from the period from Jun 1990 to the present.

**RESPONSE:** Objection is being made as to the requested materials being irrelevant, immaterial, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this request because it seeks information, which is confidential, private and personal, and the disclosure of it would necessarily invade the privacy, and expectation of privacy, or person not parties to this suite.

**REQUEST NO. 24.** All documents referring or relating to Mr. Dixon McKenzie and Mr. James Hammer participation or involvement in decision-making concerning any employee's employment, including, without limitation, decisions relating to salary, promotion, bonuses, hiring layoff or firing.

**RESPONSE:** Objection is being made as to vagueness, over breadth, relevancy, and burdensomeness. In addition to said objections, Defendant is unable to comply as it has no documents referring or relating to Mr. Dixon McKenzie and Mr. James Hammer participation or involvement in decision-making concerning any employee's employment, including, without limitation, decisions relating to salary, promotion, bonuses, hiring layoff or firing.

**REQUEST NO. 32.** The P-160's for all defendant's supervisors that were (a) promoted in period of June 1998 to September 11, 2001; and (b) those supervisor that were furloughed or laid off after September 11, 2001 up to January 10, 2002. Please provide their names, their race, nationality, and their ethnicity of all such individuals who were furloughed in the Technical Services Division, Maintenance, Quality control and Quality Assurance Division of Continental Micronesia, Inc.

**RESPONSE:** Objection is being made as to the requested materials being irrelevant, immaterial, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this request because it seeks information, which is confidential, private and personal, and the disclosure of it would necessarily invade the privacy, and expectation of privacy, or person not parties to this suite.

**REQUEST NO. 35.** All documents or computerized surveys which was done by any means, including but not limited to, electronic means and referred to as survey by the maintenance supervisors in Guam of their director Mr. James Hammer. Please provide the copy of the surveys from each and every supervisor and identify which survey belongs to which supervisor.

**RESPONSE:** Objections is being made as to vagueness, over breadth, relevancy, and burdensomeness

**REQUEST No 36:** All documents and statement from James Hammer in regards to making any racial comments either after September 11, 2001 or before September 11, 2001 to any one employed by the Defendant before or after Plaintiff's termination in reference to plaintiff.

**RESPONSE:** Defendant is unable to comply as it has no document in its possession responsive to this Request.

I also wish that defendant would have met with plaintiff at **Guam Law Library On July 15, 2003 at 0900** as stated in First Request of Production of Documents and produced the documents.

Very Truly yours



Tony H. Ashtiani

Cc; Attorney Mr. David Ledger